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News Briefs

DOI Will Lead New Investigation Of EPA Colorado Mine Spill

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The Department of Interior (DOI) is leading an independent investigation into the causes that led to an EPA cleanup operation's accidental release of 3 million gallons of wastewater containing heavy metals from the Gold King Mine in Colorado.

“The assessment begins today, Tuesday, August 18, and it is anticipated that DOI will provide the assessment report to EPA and the public within 60 days. The goal of DOI’s independent review is to provide EPA with an analysis of the incident that took place at Gold King Mine, including the contributing causes,” EPA said in an Aug. 18 statement announcing the investigation.

The announcement follows EPA Administrator Gina McCarthy's Aug. 12 statement that the agency was “in the process of initiating an independent assessment by a sister federal agency or another external entity to examine the factors that led” to the wastewater release. Based on the results of that study, she said, “we will determine what actions may be necessary to avoid similar incidents at other sites.”

The DOI review will operate alongside a separate investigation of the spill by EPA's Inspector General (IG) which that office announced Aug. 17 in response to a congressional request, spokespeople for the two agencies told *Inside EPA*.

"We're on a separate path than the IG is -- we're not coordinating at the level where I can even tell you what's similar or different" about the two investigations, a DOI spokesman said.

However, an IG spokeswoman says that office anticipates sharing information with DOI on the objectives of the two investigations, even if the two will not work together on information-gathering or other efforts.

The IG office "has just started its preliminary research. We soon will be determining what [are the] specific scope and objectives of the [IG] review of the Gold King Mine spill. We certainly expect to meet with the U.S. Department of Interior in order to determine the scope and objectives of their review in the very near future," the spokeswoman said.

The DOI investigation will be conducted primarily by the Bureau of Reclamation, which under an existing interagency agreement with EPA is the lead office in reviewing incidents like the Colorado spill, the DOI spokesman says. "We've had a person on site at Gold King Mine since Aug. 14," the spokesman says.

Meanwhile, the IG Office of Program Evaluation, Office of Audit, and Office of Investigations are working together on that review "[d]ue to the scope of the issues involved," according to the IG memo announcing its investigation, which was addressed to EPA waste chief Mathy Stanislaus and EPA Region 8 Administrator Shaun McGrath.

EPA is facing a lawsuit from at least one tribe as well as potential legal action by states after an agency cleanup crew caused the Aug. 5 spill of the wastewater, which contains arsenic, cadmium, lead and mercury, into the Animas River.

Attorneys familiar with cleanup law say that EPA will likely be sued for both natural resource damages and response damages under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law, which would deal with both environmental harms from the spill and the cost of addressing drinking water contamination and other short-term issues respectively.

But the attorneys say that since CERCLA includes broad protections against liability for EPA when it performs a site cleanup, such suits face uncertain prospects -- and the litigation could set an important precedent on the issue.

Meanwhile, the spill could potentially bolster a push for broad revisions to federal mining policies including calls for EPA Superfund financial assurance rules for mining and changes to Good Samaritan law, environmentalists say.

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